IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 24TH OCTOBER 2007 / 2ND KARTHIKA 1929

Crl.Rev.Pet.No. 1326 of 2001()

CRA.94/1994 of SESSIONS COURT, MANJERI
CC.283/1989 of JUDL. MAGISTRATE OF FIRST CLASS COURT, NILAMBUR

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REVN. PETITIONER: APPELLANT/ACCUSED

RAMAN, S/O.PERAKAN
ERAMKODIYAN HOUSE
SHARATHKUNNU COLONY
THIRUVALI AMSOM, ERANAD TALUK
MALAPPURAM DISTRICT.

BY ADV. SRI.K.M.SATHYANATHA MENON

RESPONDENTS: COMPLAINANT & STATE

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1. THE CIRCLE INSPECTOR OF POLICE
   MANJERI.

2. STATE OF KERALA REPRESENTED BY
   THE PUBLIC PROSECUTOR
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 24/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.R.UDAYABHANU, J

Crl.R.P.No.1326 of 2001

Dated this the 24th day of October, 2007

O R D E R

The revision petitioner stands convicted for the offence under Section 55(g) of the Abkari Act and sentenced to undergo simple imprisonment for six months and to pay a fine of Rs.1,000/- and in default, to undergo simple imprisonment for two months.

2. The prosecution case is that on 21.6.1989 at 11.30 a.m. the accused was found coming through the food path near the Sharathkunnu Colony carrying aluminium pot of 30 litres capacity containing 25 litres of wash and he was arrested at the spot.

3. The evidence adduced in the matter consisted of the testimony of PWs' 1 to 3, Exts. P1 to P4 and MOs' 1 and 2.

4. PW1, the Circle Inspector of Excise, has filed the charge sheet. He has also proved Ext. P1 requisition and Ext. P2 report of chemical analysis as per which the sample contained 19.66% by volume of ethyl alcohol. PW3, the preventive officer,

and PW2, the Excise Guard, have testified as to the incident. They have also testified that 750 ml. of wash was taken as sample at the spot and Ext. P3 mahazar prepared. Both of them are signatories to Ext. P3. Both of them had identified MOs' 1 and 2. PW2 in the cross examination stated that the remaining wash was destroyed at the spot.

5. It is pointed out that the Excise Guard i.e., PW2 has mentioned the date as 29.6.1989. The date of the incident is 21.6.1989. In view of the fact that he has examined about 3 years after the incident, it is only probable that he has erred in mentioning the date. The counsel has also relied on the decision reported in **Kittunny vs. State of Kerala (1981 KLT SN Case No.124, Page No.69**) wherein this court has observed that destruction of the material produced without obtaining the necessary orders would amount to irregularity. But the contention that on the above ground that the accused is to be acquitted was rejected as it was found no prejudice was caused to the accused. It is also pointed out that there was a delay of about three months in producing the MOs' before the court. In the present case, I find that the mahazar that contain the entire

details, has been produced before the court below on 23.6.1989 itself i.e., within two days. I find that the above delay is not sufficient to entitle the accused to the benefit of doubt. I find that the prosecution has fully established beyond reasonable doubt that the accused has committed the offence. The conviction is confirmed.

6. So far as the sentence is confirmed counsel for the revision petitioner has pleaded for leniency pointing out that 18 years have elapsed since the commencement of the proceedings. In view of the long delay I find that the sentence is liable to be modified. The sentence is modified to imprisonment till the rising of the court and to pay a fine of Rs.5,000/- and in default, to undergo simple imprisonment for six months. The revision petitioner is granted one months' time to remit the fine amount He shall appear before the court below on 26.11.2007 to receive the sentence.

The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
JUDGE

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